

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 454

PEDRO AGUILAR, PETITIONER,

**VS.
STANDARD OIL COMPANY OF NEW JERSEY**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT**

PETITION FOR CERTIORARI FILED OCTOBER 12, 1942.

CERTIORARI GRANTED JANUARY 4, 1943.

SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 11, 1943.

[fol. 1]

**IN UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT**

Civ. 5-108

PEDRO AGUILAR, Plaintiff-Appellant,

—against—

STANDARD OIL COMPANY OF NEW JERSEY, Defendant-Appellee

STATEMENT UNDER RULE 13

This action was commenced by the service of a summons and complaint on August 22, 1939. By notice of motion dated September 25, 1939, defendant moved to dismiss plaintiff's complaint; said motion came on to be heard before the Honorable Justice Mandelbaum on October 13, 1939, and said motion was denied. Issue was joined by the service of defendant's amended answer on March 27, 1940.

A Pre-Trial Hearing was held before Honorable John C. Knox, District Judge, on the 7th day of November, 1940, and after hearing counsel for the respective parties, the complaint was dismissed. Judgment therein was duly entered in the office of the Clerk of the Court on November 14, 1940. The plaintiff appeals from the Judgment dismissing the complaint. The Notice of Appeal was filed November 30, 1940.

There has been no arrest, bail given or property attached in this action.

That no question herein involved was referred to any commissioner, master or referee.

The plaintiff is represented by George J. Engelman.

The defendant is represented by Kirlin, Campbell, Hickox, Keating and McGrann, Esqs.

The original parties are as hereinabove set forth and there has been no change of parties or attorneys since the commencement of this action.

[fol. 2] IN DISTRICT COURT OF THE UNITED STATES, FOR THE
SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 5-108

SEAMAN'S ACTION

PEDRO AGUILAR, Plaintiff,

—against—

STANDARD OIL COMPANY OF NEW JERSEY, Defendant

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon George J. Engelman, plaintiff's attorney, whose address is 44 Whitehall Street, New York, New York, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: August 17, 1939.

Charles Weiser, Clerk of Court. (Seal of Court.)

[fol. 3] IN UNITED STATES DISTRICT COURT

COMPLAINT

SEAMAN'S ACTION

Action Under Special Rule for Seamen to Sue Without Security and Prepayment of Fees for Enforcement of Laws of the United States; for the Protection of Health and Safety at Sea:

The plaintiff, by George J. Engelman, his attorney, complaining of the defendant, alleges the following upon information and belief:

First: That at all the times hereinafter mentioned, the above named defendant was and now is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and at all said times was and is

doing business in the State of New York with an office for the regular transaction of business in the City of New York, State of New York.

Second: That at all the times hereinafter mentioned, the above named defendant was the owner of a certain steamship called the E. M. Clark.

Third: That at all the times hereinafter mentioned the above named defendant chartered, operated, managed, controlled, provisioned, manned, supplied and was in possession and control of the said steamship E. M. Clark.

Fourth: That at all the times hereinafter mentioned the E. M. Clark was and still is employed as a merchant vessel.

Fifth: That at all the times hereinafter mentioned and more particularly from on or about March 9, 1938 to and including April 18, 1938, the plaintiff was in the employ of the defendant aboard the said steamship E. M. Clark as an Able Bodied Seaman.

Sixth: That the defendant employed the plaintiff at all the times hereinafter mentioned and more particularly from [fol. 4] on or about March 9, 1938 to and including April 18, 1938 aboard the said steamship E. M. Clark as an Able Bodied Seaman.

Seventh: That on or about April 18, 1938 the Steamship E. M. Clark was lying in navigable waters at the plant of the Mexican Petroleum Company and/or American Oil Company at Cartaret, New Jersey; that on the said date plaintiff was given leave to go ashore, that he went ashore and as he was returning to the said steamship to resume his employment aboard the said Steamship E. M. Clark and while he was in the plant and on the premises of the said Mexican Petroleum Company and/or American Oil Company, he was suddenly and without any fault on his part struck by a motor vehicle and he thereby sustained very serious and permanent personal injuries. That prior to the occurrence of the accident the plaintiff had been duly admitted on the said plant and premises and had passed through a gate leading to the said plant and premises and that it was necessary for the plaintiff to walk over said plant and premises in order to reach the ship and resume his employment.

Eighth: That by reason of the said personal injuries plaintiff has been rendered sick, sore, lame and disabled, has suffered, is suffering and will very probably suffer

great pain, agony and mental anguish for a long time to come, has been and will be prevented from attending to his work for a long time to come, has lost and will lose sums of money which he otherwise would have earned, has been obliged to undergo medical care and attention, is still undergoing the same and will be obliged to submit to the same for a long time to come and may have to pay out large sums of money for medical care and attention, and the plaintiff has been permanently injured all to his damage.

Ninth: That by reason of the said accident and the resulting injuries plaintiff, under the general maritime law, [fol. 5] is entitled to be maintained and cured at the expense of the defendant.

Tenth: That the plaintiff has spent and will be required to spend sums of money for his maintenance, care and cure all to his damage in the sum of Ten Thousand Dollars (\$10,000).

Wherefore, plaintiff demands judgment against the defendant in the sum of Ten Thousand Dollars (\$10,000) as the expenses for his maintenance and cure, together with the costs and disbursements of this action.

George J. Engelman, Attorney for Plaintiff, O. & P.
O. Address, 44 Whitehall Street, Borough of Manhattan, City of New York.

IN UNITED STATES DISTRICT COURT

AMENDED ANSWER

Defendant, Standard Oil Company of New Jersey, for its amended answer, by its attorneys, Kirlin, Campbell, Hickox, Keating & McGrann, alleges upon information and belief as follows:

First: It admits that at the times mentioned in the complaint, it was and still is a foreign corporation, organized and existing under and by virtue of the laws of the State of Delaware.

Second: It admits the allegations contained in paragraph numbered Second of the complaint.

[fol. 6] Third: It admits that at the times mentioned in the complaint, it provisioned, manned and supplied, was in

partial possession, control, operation and management of the Steamship E. M. Clark. It denies each and every other allegation contained in paragraph numbered Third of the complaint.

Fourth: It admits the allegations contained in paragraph numbered Fourth of the complaint.

Fifth: It admits that the plaintiff was in its employ commencing March 19, 1937, and terminating on April 18, 1938 as an A. B. seaman attached to the Steamship E. M. Clark. It denies that at the time of the accident alleged in the complaint, plaintiff was in the service of or in the employ of the defendant. It denies each and every other allegation contained in paragraph numbered Fifth of the complaint.

Sixth: It admits that the plaintiff was in its employ commencing March 19, 1937 and terminating on April 18, 1938 as an A. B. seaman attached to the Steamship E. M. Clark. It denies that at the time of the accident alleged in the complaint, plaintiff was in the service of or in the employ of the defendant. It denies each and every other allegation contained in paragraph numbered Sixth of the complaint.

Seventh: It admits that on April 18, 1938, the Steamship E. M. Clark was lying in navigable waters at the plant of the Mexican Petroleum Corporation. It denies that it has any knowledge or information sufficient to form a belief thereof as to each and every other allegation contained in paragraph numbered Seventh of the complaint.

Eighth: It denies that it has any knowledge or information sufficient to form a belief thereof as to each and every allegation contained in paragraph numbered Eighth of the complaint.

Ninth: It denies each and every allegation contained in paragraph numbered Ninth of the complaint.

[fol. 7] Tenth: It denies that it has any knowledge or information sufficient to form a belief thereof as to each and every allegation contained in paragraph numbered Tenth of the complaint.

Further Answering the Complaint and as a First, Separate, Complete and Distinct Defense Thereto, Defendant Alleges on Information and Belief:

Eleventh: That prior to the commencement of this action and on or about the 10th day of January, 1939, pursuant to an agreement of settlement made between the plaintiff and defendant herein, the defendant gave to plain-

tiff, and plaintiff accepted and received from defendant, the sum of One Hundred Five (\$105.00) Dollars in full settlement, satisfaction and discharge of any and all claims for injury and plaintiff's damage alleged in the complaint to have been sustained by reason of the facts therein set forth or otherwise.

*Twelfth: At the time of the said payment and accord and satisfaction as aforesaid, said defendant in good faith disputed and denied its liability to plaintiff with respect to the matters alleged in the complaint.

Further Answering the Complaint and as a Second Separate, Complete and Distinct Defense Thereto, Defendant Alleges on Information and Belief:

Thirteenth: That prior to the commencement of this action and on or about the 10th day of January, 1939, plaintiff for a valuable consideration by an instrument in writing released this defendant from the alleged claim set forth in the complaint.

Wherefore the defendant demands that the complaint be dismissed with costs to the defendant as against the plaintiff and that the court grant to the defendant such other, further and different relief as the justice of the cause may require.

Kirlin, Campbell, Hickox, Keating & McGrann, by
R. Parmer, A Member of the Firm, Attorneys for
Defendant, Office & P. O. Address, 120 Broadway,
New York, N. Y.

IN UNITED STATES DISTRICT COURT

ORDER FOR PLAINTIFF TO FURNISH PARTICULARS—December
8, 1939

First: State who gave plaintiff shore leave, giving his name and/or capacity.

Second: State when the plaintiff left the Steamship E. M. Clark to go ashore.

Third: State where the plaintiff went upon leaving the Steamship E. M. Clark.

Fourth: State where the plaintiff went while ashore and what he did up until the time of the alleged accident.

Fifth: State the plaintiff's regular watch hours.

Sixth: Give the date, hour and minute so nearly as may be stated at which the plaintiff claims to have been injured.

Seventh: State how the plaintiff claims the accident happened.

Eighth: State where the accident happened and whether or not it occurred upon a public street.

Ninth: State where, with relation to the Steamship E. M. Clark, the plaintiff's alleged accident occurred and give [fol. 9] the approximate distance between the place of the alleged accident and the Steamship E. M. Clark.

Tenth: Give a statement of each and every injury which it is claimed plaintiff sustained for which he claims this defendant is responsible, giving the name, location, extent and duration of each injury and which, if any, are claimed to be permanent.

Eleventh: State the amount of money it is claimed that plaintiff has expended for medical attention and medicines on account of the injuries for which he claims this defendant is responsible and to what extent he has become indebted for these items, if at all.

Twelfth: State the amount of money the plaintiff claims to be entitled to for his maintenance and cure.

Thirteenth: Give the date of commencement and the date of termination of the period for which plaintiff claims to be entitled to maintenance.

Fourteenth: Give the date upon which the plaintiff returned to work after the alleged injury; his capacity in said employment; and the name of his employer.

Fifteenth: State the permanent residence of plaintiff, giving the street, house number, town, village or city and the state (country).

Sixteenth: State the country of which plaintiff was a citizen at the time of the commencement of this action and

state whether by nativity or naturalization, and if the latter, state where and when plaintiff was naturalized.

Seventeenth: State the name and/or location of each and every hospital at which plaintiff claims to have received treatment, giving the dates during which this treatment was obtained and indicate which of the treatments were inpatient and which were outpatient.

[fol. 10] IN UNITED STATES DISTRICT COURT

PLAINTIFF'S BILL OF PARTICULARS

Plaintiff, answering defendant's demand for a bill of particulars, alleges the following upon information and belief:

First: The captain of the vessel.

Second: About 1:00 P. M.

Third: To the City of Carteret.

Fourth: Went to a telegraph office, walked about the City of Carteret and had some good there.

Fifth: 8 to 12.

Sixth: Between 7:00 and 7:30 P. M.

Seventh: As plaintiff was inside the plant where the ship was moored and as he was walking along a roadway in the direction of the ship, he was struck by a motor vehicle.

Eighth: The accident occurred on the plant or premises of the Mexican Petroleum Corporation and/or the American Oil Company at Carteret, New Jersey. The accident occurred alongside a roadway of said plant between the gate leading to the plant and the vessel. To the best of plaintiff's recollection the said roadway has no name.

Ninth: Plaintiff was injured inside the plant on the roadway leading to the ship. Plaintiff cannot be certain of the exact distance from the scene of the accident to the vessel, but to the best of his recollection it was approximately one half mile to the ship.

Tenth: Plaintiff sustained multiple contusions and abrasions, a complete comminuted fracture of the lower third

of the left femur. The fracture has resulted in over-riding, ankylosis of the left knee and marked impairment of function of the left leg and knee and a deformity of the left leg. These injuries are all permanent except the contusions and abrasions from which plaintiff recovered.

[fol. 11] Eleventh: No sum.

Twelfth: \$2.50 per day from January 7, 1939, to date or the sum of \$920.

Thirteenth: January 7, 1939, to November 27, 1939. November 30, 1939, to date and thereafter.

Fourteenth: Plaintiff returned to work for the McCormick S. S. Co. on November 27, 1939, at wages of \$2 a day and worked until November 30, 1939.

Fifteenth: Corozal, Puerto Rico.

Sixteenth: Plaintiff was a citizen of Chile at the time of the accident and alleges that at that time he had filed papers declaring his intention to become an American citizen.

Seventeenth: Perth Amboy General Hospital from April 18, 1938, to January 7, 1939, as an in patient. U. S. Public Health Service, San Juan, Puerto Rico, from March 13, 1939, to November 7, 1939, as an out patient.

Dated, New York, January 10, 1940.

Yours, etc., George J. Engelman, Attorney for Plaintiff, O. & P. O. Address, 44 Whitehall Street, Borough of Manhattan, City of New York.

To: Kirlin, Campbell, Hickox, Keating & McGrann, Esqs., Attorneys for Defendant, 120 Broadway, New York City.

[fol. 12] IN UNITED STATES DISTRICT COURT

NARRATIVE STATEMENT OF AGREED FACTS

On April 18, 1938, the defendant's vessel, the Steamship E. M. Clark, was lying docked at the plant or premises of the Mexican Petroleum Company; defendant neither owned, operated nor controlled said plant or premises. On that day the plaintiff was in the employ of the defendant at-

tached to said vessel as a member of her crew and plaintiff obtained permission from the Master of the vessel for shore leave and he went ashore on his own personal business. In returning to the vessel from shore leave, in order to reach the vessel, he had to pass over the said plant or premises of the Mexican Petroleum Company and after he had passed through the entrance gate of said plant or premises, and while he was walking on the roadway of said plant or premises about a half mile from the ship, he was struck by a motor vehicle which was neither owned, operated nor controlled by the defendant.

[fol. 13] IN UNITED STATES DISTRICT COURT

Pretrial No. 592.

Civ. 5-108.

OPINION

Before: Hon. JOHN C. KNOX, *District Judge*.

New York, November 7, 1940;

10:30 a. m.

The Court: It being conceded that the plaintiff in this action was struck by an automobile, neither under the control of the defendant nor owned by it, within the premises but at least a half mile from the ship to which this plaintiff was returning; plaintiff was a seaman on board the ship "E. M. Clark". He had absented himself therefrom for purposes of his own and returned about nine-thirty at night, walking along the pathway to the dock at which the ship was moored.

I am of the opinion that there was no liability of the defendant by reason of the injuries sustained by the plaintiff, either for indemnity or maintenance and cure. Therefore, the action is dismissed.

[fol. 14] IN UNITED STATES DISTRICT COURT

Civ. 5-108.

Calendar #592.

ORDER AND JUDGMENT

The above entitled action having come on to be heard before this Court at a pre-trial hearing held on the 7th day of November, 1940, and the parties having appeared by their respective counsel, and having entered into the record an agreed statement of the facts involved in the issues in said action, and after consideration of said facts, and upon due deliberation, it is

ORDERED AND ADJUDGED that the complaint herein be and is hereby dismissed, and it is further

ORDERED that the Clerk of this Court be and is hereby directed to enter this judgment accordingly.

Dated, New York, November 14th, 1940.

John C. Knox, U. S. D. J.

Judgment rendered this 14th day of November, 1940.

George J. H. Follmer, Clerk.

[fol. 15] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL.

SIRS:

PLEASE TAKE NOTICE that the plaintiff, PEDRO AGUILAR, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the Order and judgment made and entered herein on the 14th day of November, 1940, which dismissed the plaintiff's complaint, and from each and every part of said order and judgment which dismissed plaintiff's cause of action.

Dated, New York, November 22, 1940.

Yours, etc., George J. Engelman, Attorney for Plaintiff, O. & P. O. Address, 44 Whitehall Street, Borough of Manhattan, City of New York.

To: Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant, 120 Broadway, New York City.

[fol. 16] · IN UNITED STATES DISTRICT COURT

STIPULATION SETTLING RECORD

IT IS HEREBY STIPULATED AND AGREED that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed by the parties.

Dated, New York, March 18, 1941.

George J. Engelman, Attorney for Plaintiff-Appellant.

Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant-Appellee.

[fol. 17] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 18] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT, OCTOBER TERM, 1941

No. 307

(Argued June 5, 1942. Decided July 6, 1942)

PEDRO AGUILAR, Appellant,

v.

STANDARD OIL COMPANY OF NEW JERSEY, Appellee

Appeal from a judgment of the District Court for the Southern District of New York, dismissing the complaint in an action at law by a seaman to recover for maintenance and cure.

Before L. Hand Augustus N. Hand and Clark, Circuit
Judges

George J. Engelman for the appellant.

Walter X. Connor for the appellee.

Per CURIAM:

This appeal turns upon whether a seaman may maintain a suit for maintenance and cure under the following circumstances. The ship was in port moored to a wharf, and [fol. 19] the plaintiff got leave to go ashore to attend to personal business. To go to his destination he had to cross the premises of the Mexican-Petroleum Company at which the ship was moored; and, while he was coming back after finishing his business, he was struck by a motor truck and injured, about half a mile away from the ship. The district judge held that his right to maintenance and cure extended only to injuries suffered while he was engaged upon the ship's business and dismissed the complaint.

The outlines of the seaman's right to maintenance and cure have remained fairly constant from very ancient times; until Congress sees fit to change its incidents, the courts should enforce it as it is; it has already been generously supplemented by the Jones Act (§ 688, Title 46, U. S. Code). From the earliest times it was recognized that when seamen went ashore without leave and got hurt in a drunken brawl

or the like, not only was the ship not liable but the master might discharge them. Article VI of the Laws of Oleron (30 Fed. Cas. p. 1174). In Article XVIII of the Laws of Wisbuy (30 Fed. Cas. p. 1191), the right to cure was stated to arise when the seaman was injured "in the master's or the ship's service"; but the master's power of discharge depended upon his going ashore "on his own head to be merry, and divert himself." In Article XXXIX of the Laws of the Hanse Towns (30 Fed. Cas. p. 1200), the right was defined as arising from injuries "in the ship's service"; and Article XI provided punishment for his absence "without leave." The Ordinances of Louis XIV (Articles XI and XII of Title Fourth of "Maritime Contracts," 30 Fed. Cas. p. 1209) similarly conferred the right if the injury was "in the service of the ship," but again the power to discharge was conditional upon disobedience. Thus it will be observed that originally the power to discharge the seaman and the forfeiture of his right were treated alike; but that [fol. 20] the two became distinguished in the laws of Wisbuy, and that the seaman's right was limited to injuries suffered in the ship's service. This has been the accepted rubric since then down to *Calmar S. S. Corp. v. Taylor*, 303 U. S. 525, 527, 528. The plaintiff is in error in supposing that Justice Story ruled otherwise in *Reed v. Canfield*, Fed. Cas. 11,641. In that case it is true that the mates had improperly decided to go ashore "to be merry and divert" themselves, but they had ordered the seamen to row them from the ship; and the seamen were upon the ship's service because they had no choice but to obey orders. The notion was indeed carried so far in *Meyer v. Dollar S. S. Lines*, 49 Fed. (2d) 1002 (C. C. A. 9), as to deny the right for injuries suffered on shipboard when the seaman was playfully wrestling while not on watch; and it may be that this is not consistent with our own decision in *Holm v. Cities Services Transp. Co.*, 60 Fed. (2d) 721. Be that as it may, it is not to be confused with the exception that a seaman forfeits his right to the cure of injuries suffered even on shipboard, if they are caused by his misconduct. *Lortie v. American-Hawaiian S. S. Co.*, 78 Fed. (2d) 819 (C. C. A. 9); *The S. S. Berwindglen*, 88 Fed. (2d) 125 (C. C. A. 1); *Barlow v. Pan Atlantic S. S. Corp.*, 101 Fed. (2d) 697 (C. C. A. 2). A distinction based upon the same activities of the seaman ashore and on board ship is perhaps *a priori* not

very reasonable; but it has from ancient times been true that what takes place on the ship may have different legal consequences from the same events on the land. Besides, the risks of even amusement on board ship are more contracted than those on land; and as to a seaman's private business, it can scarcely be said to be part of the ship's service in any sense. Be that as it may, with the doubtful exception of *Hogan v. J. M. Danziger* (1938), Amer. Mar. Cas. 685, we have found no case holding that the right [fol. 21] extends to such injuries, and a number of cases hold that it does not. *Collins v. Dollar S. S. Lines*, 23 Fed. Suppl. 395; *The President Coolidge*, 23 Fed. Suppl. 575; *Smith v. American South African Line*, 37 Fed. Suppl. 262; *Lilly v. United States Lines Co.*, 42 Fed. Suppl. 214; *Wahlgren v. Standard Oil Company* (1941), Amer. Mar. Cas. 1788.

The argument that as soon as the plaintiff had finished his business and started back to the ship, he went again into her service is untenable; the occasion for his return was the same as that for his leaving; i.e., his attention to his own business, not the ship's. *Hennessy v. M. & J. Tracy, Inc.*, 295 Fed. Rep. 680 (C. C. A. 4), was quite different; the seaman had to leave the ship after his discharge to be quit of the job. His position was like that of one who sleeps ashore and goes back and forth to work upon a harbor vessel; it is part of the business that he shall leave the ship at night and come back in the morning. *The Bouker No. 2*, 241 Fed. Rep. 831 (C. C. A. 2).

Judgment affirmed.

[fol. 22] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND
CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 25th day of July, one thousand nine hundred and forty-two.

Present: Hon. Learned Hand, Hon. Augustus N. Hand, Hon. Charles E. Clark, Circuit Judges.

PEDRO AGUILAR, Plaintiff-Appellant,

v.

STANDARD OIL COMPANY OF NEW JERSEY, Defendant-Appellee

Appeal from the District Court of the United States for the
Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration/Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

D. E. Roberts, Clerk.

[fol. 23] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Pedro Aguilar v. Standard Oil Co. of N. J. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Jul. 25, 1942. D. E. Roberts, Clerk.

[fol. 24] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 25] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—January 4, 1943

ON PETITION FOR WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the Second Circuit.

The order of November 16, 1942, denying certiorari in this case is vacated, and the petition for writ of certiorari is granted. The case is assigned for argument immediately following No. 582, Waterman Steamship Corporation vs. Jones.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 46,955 U. S. Circuit Court of Appeals, Second Circuit, Term No. 454: Pedro Aguilar, Petitioner, vs. Standard Oil Company of New Jersey. Petition for a writ of certiorari and exhibit thereto. Filed October 12, 1942. Term No. 454 O. T. 1942.

(4055)